

SENATE BILL 3189
By Springer

AN ACT to amend Tennessee Code Annotated, Title 10; Title 38; Title 39; Title 40 and Title 41, to enact the "Sexually Violent Persons Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, is amended by adding the following Sections 2 through 19 as a new part thereto:

SECTION 2. This part shall be known and may be cited as the "Sexually Violent Persons Act of 1998".

SECTION 3. The general assembly finds that a small but extremely dangerous group of sexually violent persons exist who should not be returned to society until such time as such persons no longer pose a threat to society. The general assembly further finds that sex offenders are extremely habituated and that modern technology and science has, in many ways, addressed the propensity to commit sex abuse and has been successful in curtailing many individual's desires and impulses to commit sex abuse offenses.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Department" means the department of correction;

(2) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence;

(3) "Commissioner" means the commissioner of correction;

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(4) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification; and

(5) "Sexually violent person" means a person who has been convicted of a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease or mental defect, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

SECTION 5.

(a) In this act, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(b) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform the attorney general and the district attorney in the county in which the person was convicted of a sexually violent offense at least three (3) months before the applicable date of the following:

(1) The anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted of a sexually violent offense.

(2) The anticipated release from a department of correction facility.

(3) The discharge or conditional release of a person who has been found not guilty of a sexually violent offense by reason of insanity, mental disease or mental defect.

(c) The agency with jurisdiction shall provide the attorney general and the applicable district attorney general with the following:

(1) The person's name, identifying factors, anticipated future residence and offense history;

(2) A comprehensive evaluation of the person's mental condition and a recommendation for action in furtherance of the purposes of this act; and

(3) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(d) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.

SECTION 6.

(a) A petition alleging that a person is a sexually violent person may be filed by the following persons:

(1) The attorney general, at the request of the agency with jurisdiction over the person, or upon his or her own motion. If the attorney general, after consulting with and advising the applicable district attorney of the county in which the person was convicted of a sexually violent offense, decides to file a petition under this section, the attorney general shall file the petition before the date of the release or discharge of the person.

(2) If the attorney general does not file a petition under this section, the district attorney of the county in which the person was convicted of a sexually violent offense, or found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease, or mental defect, may file a petition.

(b) A petition filed under this section shall state that all of the following apply to the person alleged to be a sexually violent person:

(1) The person has been:

(A) Convicted of a sexually violent offense; or

(B) Found not guilty of a sexually violent offense by reason of insanity, mental disease, or mental defect;

(2) The person is within ninety (90) days of discharge or entry into mandatory supervised release from a department of correction facility for a sentence that was imposed upon a conviction for a sexually violent offense;

(3) The person has a mental disorder; or

(4) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(c) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under subsection (b) was an act that was sexually motivated, the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(d) A petition under this section shall be filed in either of the following:

(1) The circuit court for the county in which the person was convicted of a sexually violent offense or found not guilty of a sexually violent offense by reason of insanity, mental disease or mental defect.

(2) The circuit court for the county in which the person is in custody under a sentence, a placement to a department of correction facility or a commitment order.

SECTION 7. The proceedings under this act shall be civil in nature.

SECTION 8.

(a) Any person who is the subject of a petition filed under Section 6 of this act shall be served with a copy of the petition.

(b) The circuit court in which a petition is filed shall conduct all hearings under this act. The court shall give the person who is the subject of the petition reasonable notice of the time and place of such hearing. The court may designate additional persons to receive such notices.

(c) At any hearing conducted under this act, the person who is the subject of the petition has the right to:

- (1) Be present and to be represented by counsel. If the person is indigent, the court shall appoint counsel;
- (2) Remain silent;
- (3) Present and cross-examine witnesses; and
- (4) Have the hearing recorded by a court reporter.

(d) The person who is the subject of the petition, the person's attorney, the attorney general or the district attorney general may request that a trial under Section 10 of this act be a jury trial. A verdict of a jury under this act is not valid unless it is unanimous.

(e) Whenever the person who is the subject of the petition is required to submit to an examination under this act, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person.

SECTION 9.

(a) Upon the filing of a petition under this act, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under this act. A person detained under this section shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a department of correction correctional facility or is committed to institutional care, and the court orders detention under this section, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this section remains in effect until the person is discharged after a trial under this act or until the effective date of a commitment order under this act, whichever is applicable.

(b) Whenever a petition is filed pursuant to this act, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within seventy-two (72) hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(c) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(d) The department shall promulgate rules pursuant to Title 4, Chapter 5, that provide the qualifications for persons conducting evaluations under subsection (c) of this section.

(e) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under subsection (b) of this section, appoint counsel.

SECTION 10.

(a) A trial to determine whether the person who is the subject of a petition pursuant to Section 6 of this act is a sexually violent person shall commence no later than forty-five (45) days after the date of the probable cause hearing. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(b) At the trial to determine whether the person who is a sexually violent person, all rules of evidence in criminal proceedings apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(c) The person who is the subject of the petition, the person's attorney, the attorney general or the district attorney may request that a trial under this section be by a jury. A request for a jury trial under this subsection shall be made within ten (10) days after the probable cause hearing. If no request is made, the trial shall be by the court. The person, the person's attorney or the attorney general or district attorney, whichever is applicable, may withdraw his or her request for a jury trial.

(d)

(1) At a trial on a petition under this act, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(2) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated, the state is

required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(e) Evidence that such person was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(f) If the court or jury determines that such person is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person. If the court or jury is not satisfied beyond a reasonable doubt that such person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

SECTION 11.

(a) If a court or jury determines that the person who is the subject of a petition is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person.

(b)

(1) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition is a sexually violent person. If the court lacks sufficient information to make the determination required by subsection (b)(2) of this section immediately after trial, it may adjourn the hearing and order the department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order.

(2) An order for commitment under this section shall specify either institutional care in a secure facility or conditional release. In determining

whether commitment shall be for institutional care in a secure facility or for conditional release, the court may consider the nature and circumstances of the behavior that was the basis of the allegation in the petition, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

(3) If the court finds that the person is appropriate for conditional release, the court shall notify the department. The department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county health department, with the sex offender treatment board, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within twenty-one (21) days after the court finding that the person is appropriate for conditional release, unless the department and the person to be released request additional time to develop the plan.

(4) An order for conditional release places the person in the custody and control of the department. A person on conditional release is subject to the conditions set by the court and to the rules of the department. Before a person is

placed on conditional release by the court under this section, the court shall notify local law enforcement officers for the municipality and county in which the person will be residing. The notification requirement under this section does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody. The department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court within forty-eight (48) hours after the detention. The court shall hear the petition within thirty (30) days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department may detain the person in a jail, in a hospital or treatment facility. The state has the burden of proving by clear and convincing evidence that any condition of release has been violated, or that the safety of others requires that the conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment.

SECTION 12.

(a)

(1) If a person is found to be a sexually violent person under this act, the court shall require the person to provide a biological specimen for deoxyribonucleic acid (DNA) analysis.

(2) The results from deoxyribonucleic acid (DNA) analysis of a specimen under paragraph (a)(1) of this section may be used only as authorized.

(b) The department shall promulgate rules providing for procedures for persons to provide specimens pursuant to subsection (a).

SECTION 13. Persons found to be sexually violent shall be placed in an area of the correctional facility where they do not come into frequent contact with inmates who are not sexually violent.

SECTION 14.

(a) If a person has been committed and has not been discharged, the department shall conduct an examination of his or her mental condition within six (6) months after an initial commitment and again thereafter at least once each twelve (12) months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to conditional release or to discharge. At the time of a reexamination under this section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

(b) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than thirty (30) days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the court that committed the person.

(c) Notwithstanding the provision of subsection (a) of this section, the court that committed a person may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

SECTION 15.

(a) Any person who is committed for institutional care in a secure facility or other facility of this act may petition the committing court to modify its order by authorizing

conditional release if at least six (6) months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this section on the person's behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the attorney general or district attorney general, whichever is applicable and, if such person is indigent, counsel will be appointed for such person. If the person petitions through counsel, his or her attorney shall serve the attorney general or district attorney, whichever is applicable.

(c) Within twenty (20) days after receipt of the petition, the court shall appoint one (1) or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within thirty (30) days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(d) The court, without a jury, shall hear the petition within thirty (30) days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not confined in a secure facility. In making a decision under this subsection, the court may consider the nature and circumstances of the behavior that was the basis of the allegation in the petition, the person's mental history and present mental condition,

where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.

(e) If the court finds that the person is appropriate for conditional release, the court shall notify the department. The department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county health department, with the sex offender treatment board, with another public agency, or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within sixty (60) days after the court finding that the person is appropriate for conditional release, unless the department and the person to be released request additional time to develop the plan.

SECTION 16.

(a)

(1) If the commissioner determines at any time that a person committed under this act is no longer a sexually violent person, the commissioner shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the attorney general or the district attorney's office that filed the petition, whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within forty-five (45) days after the date of receipt of the petition.

(2) At a hearing under this subsection, the attorney general or district attorney, whomever filed the original petition, shall represent the state and shall

have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(3) If the court is satisfied that the state has not met its burden of proof under subsection (a)(2) of this section, the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under subsection (a)(2), the court may proceed to determine whether to modify the petitioner's existing commitment order.

(b)

(1) A person may petition the committing court for discharge from custody or supervision without the commissioner's approval. The commissioner shall provide the committed person with a written notice of the person's right to petition the court for discharge over the commissioner's objection. The notice shall contain a waiver of rights. The commissioner shall forward the notice and waiver form to the court with the report of the department's examination. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(2) If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this section, the committed person is entitled to be present. The attorney general or district attorney, whichever filed the original petition, shall represent the state at a

hearing under this section. The hearing under this section shall be held by a court of competent jurisdiction. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(3) If the court is satisfied that the state has not met its burden of proof under subsection (b)(2), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under subsection (b)(2) of this section, the court may proceed to determine whether to modify the person's existing commitment order.

SECTION 17. In addition to the procedures of this act, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the department's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing. If the person has not previously filed a petition for discharge without the commissioner's approval, the court shall set a probable cause hearing.

SECTION 18.

(a) If the court places a person on conditional release or discharges a person the department shall notify all of the following:

(1) Whichever of the following persons is appropriate in accordance with the provisions of subsection (a)(3):

(A) The victim of the act of sexual violence;

(B) An adult member of the victim's family, if the victim died as a result of the act of sexual violence; or

(C) The victim's parent or legal guardian, if the victim is younger than eighteen (18) years old.

(2) The department of correction.

(b) The notice shall inform the department of correction and the person notified of the name of the person committed under this act and the date the person is to be placed on conditional release or discharged. The department shall send the notice, postmarked at least seven (7) days before the date the person committed under this act is to be placed on conditional release or discharged, to the department of correction and the last-known address of the person notified under subsection (a).

(c) The department shall design and prepare cards for persons specified in subsection (a) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this act and any other information the department determines is necessary. The department shall provide the cards, without charge, to the attorney general and district attorneys in the state. The attorney general and district attorney shall provide the cards, without charge, to persons specified in subsection (a). These persons may send completed cards to the department. All records or portions of records of the department that relate to mailing addresses of these persons are not subject to inspection or copying pursuant to Section 10-7-504.

SECTION 19. This act applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on, or after the effective date of this act.

SECTION 20. Tennessee Code Annotated, Section 10-7-504(a), is amended by adding a new subdivision thereto, as follows:

() Mailing addresses of persons notified of the conditional release or discharge of a sexually violent person.

SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 22. This act shall take effect July 1, 1998, the public welfare requiring it.